

Corning Painter
Chief Executive Officer

Orion Engineered Carbons LLC
4501 Magnolia Cove Drive, Suite 106
Kingwood, Texas 77345

Direct Phone: +1-281-318-4263
corning.painter@orioncarbons.com

January 29, 2021

Via CDX and Email

Thomas P. Carroll
Acting Director, Air Enforcement Division
U.S. Environmental Protection Agency
MC 2242A
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: *United States v. Orion Engineered Carbons, LLC*, Consent Decree (Case No. 6:17-cv-01660) – Notice of Intent to Assert Claim of Force Majeure – Ninth Supplemental Update

Dear Mr. Carroll:

Orion Engineered Carbons, LLC (Orion) provides this letter in response to EPA's letters dated April 24, 2020, October 21, 2020, and January 25, 2021. EPA's April 24 letter requested updates regarding Orion's March 23, 2020 notice of intent to assert force majeure. EPA's April 24 letter requested an initial response within four weeks and supplemental updates every four weeks thereafter. Orion provided its initial response on May 21, 2020 (the "Initial Response"). This letter is Orion's ninth supplemental update.

We have reviewed your January 25, 2021 letter. [REDACTED]

Orion takes seriously its duty to mitigate force majeure effects and to fulfill its Consent Decree duties on the one hand, as well as its obligations to workers under OSHA, CDC, and state and local regulations, orders, and guidance on the other hand. [REDACTED]

Consistent with your request for open and continuing dialogue, **Orion would like to request a virtual meeting** to further discuss [REDACTED], as well as any other concerns EPA may have.

Contains Confidential Business Information

We ask that you treat the redacted portions in the public version of this submittal as confidential business information (CBI) pursuant to 40 C.F.R. Part 2. Orion's updated responses to the questions in EPA's April 24 letter follow.

Ivanhoe

1. Clarify the meaning of the term, "pollution control projects required by the CD at [] Ivanhoe."

No change since Initial Response.

2. Do the PM Early Warning Systems, baghouses and incineration devices necessary to achieve MACT compliance remain operational?

No change since Initial Response.

3. Are any of Orion's [REDACTED] employees working onsite, and if so, how many?

[REDACTED]

4. What activities are the employees performing? Are they making carbon black?

[REDACTED]

5. Provide any updates received from Defendant's contractors related to COVID-19.

See above under item 3.

6. Provide any updates, orders, or directives from state and local officials related to COVID-19.

¹ Orion has confirmed that its previously reported total was an undercount that excluded nine cases.

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The following is a brief summary of orders affecting Orion issued since the eighth supplemental update:

Federal

January 21: Presidential Executive Order (EO) of January 21, 2021 on Worker Health and Safety.² As part of President Biden's National Strategy for the COVID-19 Response and Pandemic Preparedness, this EO directs the Occupational Safety and Health Administration to issue updated guidance on COVID-19 worker protections. It also directs OSHA and the Mine Safety and Health Administration to consider issuing emergency temporary standards. OSHA must issue temporary standards and guidance by February 4, 2021 per this EO and it also directs OSHA to increase enforcement.

Louisiana

January 12: Governor issues Proclamation 6 JBE 2021 keeping Louisiana in Phase 2 of reopening, continuing the statewide mask mandate, and requiring businesses like Orion to maintain at least moderate social distancing between all employees.³

Governor also issues Proclamation 7 JBE 2021 extending emergency provisions imposing travel restrictions on public employees, suspending in-person shareholder meetings, and imposing a variety of restrictions on the operations of government entities, among other measures.⁴

January 13: LDEQ issues Eighteenth Amended Declaration of Emergency and Administrative Order. LDEQ declares that "an emergency exists" and that "measures are necessary to prevent serious threats to life or safety." The order extends certain regulatory deadlines, among other measures.⁵

² President Biden, Executive Order on Protecting Worker Health and Safety (Jan. 21, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/21/executive-order-protecting-worker-health-and-safety/>.

³ State of Louisiana, Proclamation 6 JBE 2021 (Jan. 12, 2021), <https://gov.louisiana.gov/assets/Proclamations/2021/6-JBE-2021-StateofEmergency-Renewing-COVID-19.pdf>.

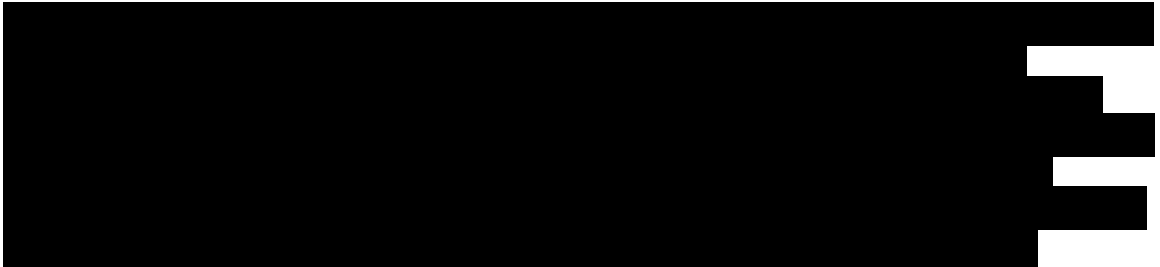
⁴ State of Louisiana, Proclamation 7 JBE 2021 (Jan. 12, 2021), <https://gov.louisiana.gov/assets/Proclamations/2021/7-JBE-2021-StateofEmergency-COVID-19-Extension.pdf>.

⁵ Louisiana Department of Environmental Quality, Eighteenth Amended Declaration of Emergency and Administrative Order (Jan. 13, 2020), https://www.deq.louisiana.gov/assets/docs/emergency_declarations/NineteenthAmendedDEAOCOVID19.pdf.

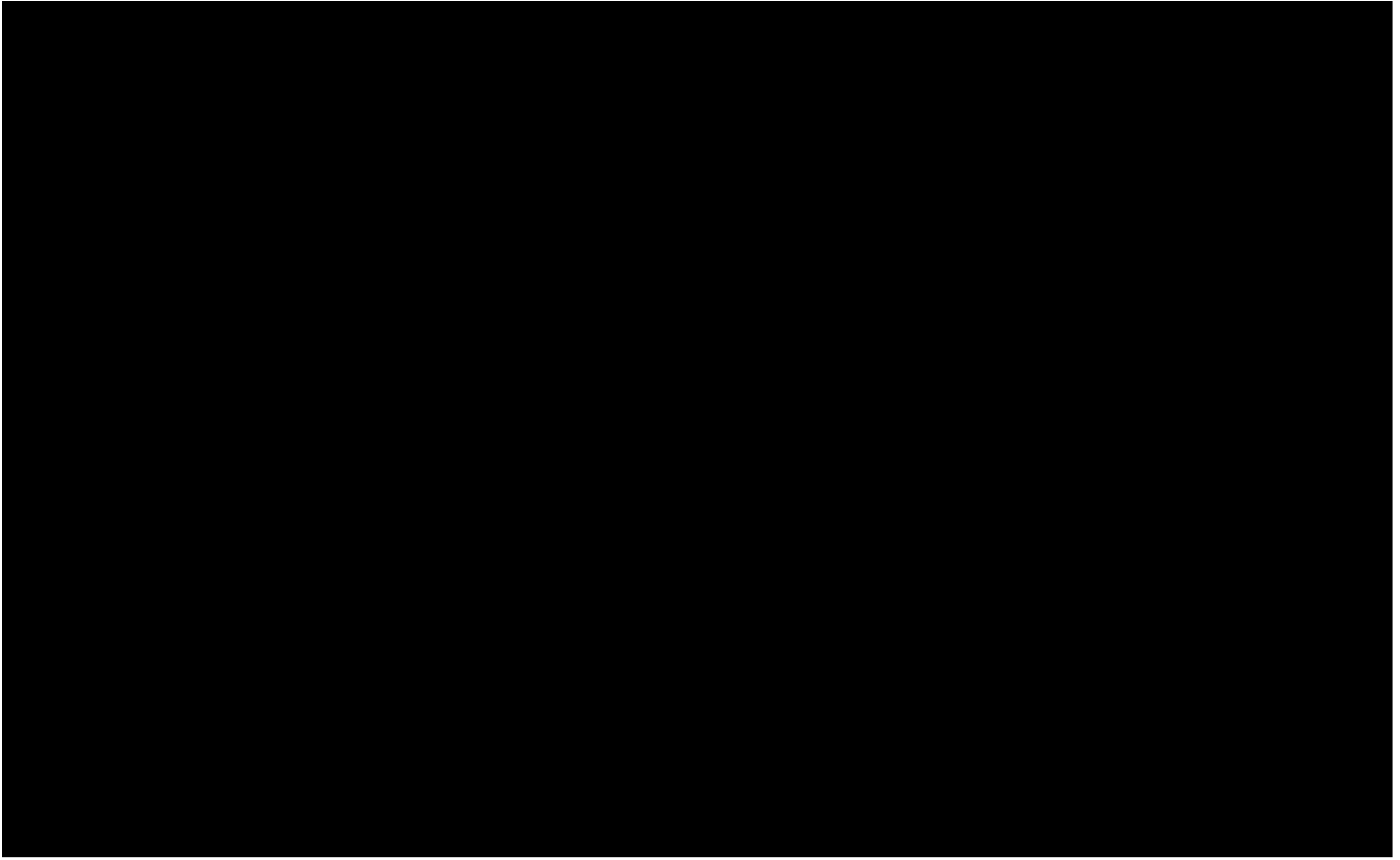
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Additionally, the Governor has made clear that “should there be an increase in the number of confirmed COVID-19 cases or should the number of COVID-19 related hospitalizations threaten the ability of the health care system to properly respond, it may be necessary to go back to the full restrictions in the [original] Stay at Home order.”⁶

7. Provide a detailed construction schedule, reflective of the anticipated schedule as of March 1, 2020, (broken out by month), that specifies the work being performed, the number of contractors expected to be on site (noting the name of the company), the anticipated date of arrival of major parts, and any other relevant information.



⁶ State of Louisiana, Proclamation 6 JBE 2021 (Jan. 12, 2021), <https://gov.louisiana.gov/assets/Proclamations/2021/6-JBE-2021-StateofEmergency-Renewing-COVID-19.pdf>.



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Conclusion

Orion remains committed to working with EPA to fulfill the requirements of the Consent Decree while protecting the health and safety of Orion's employees and contractors. Orion will provide its next update on or before February 26, 2021. In the meantime, Orion will reach out to EPA to discuss potential dates for a virtual meeting to further discuss [REDACTED], as well as any other concerns EPA may have.

Sincerely,



Corning Painter
Chief Executive Officer
Orion Engineered Carbons, GmbH

cc: Kellie Ortega, U.S. Environmental Protection Agency
David Friedland, Beveridge & Diamond, P.C.
Jason Dunn, U.S. Department of Justice
Katherine Abend, U.S. Department of Justice
Celena Cage, Louisiana Department of Environmental Quality
Brandon Williams, Louisiana Department of Environmental Quality
Dwana King, Louisiana Department of Environmental Quality